



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2004

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2004-10721

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215562.

The Waco Police Department (the "department") received a request for the following information:

1. The personnel file of [a named officer] while employed by the Waco Police Department.
2. Any record of disciplinary action against [the named officer] as a result of his conduct while employed by the Waco Police Department.
3. Any record of any disciplinary action against [the named officer] as a result of conduct while employed by the Waco Police Department which involved [a named individual].
4. Any record of any complaint made against [the named officer] as a result of his conduct while employed by the Waco Police Department.
5. Any record of any complaint made against [the named officer] as a result of his conduct while employed by the Waco Police Department which was based upon allegations of sexual misconduct.
6. Any records of the termination of [the named officer's] employment with the Waco Police Department.
7. Any record of sexual misconduct, charged or uncharged, by [the named officer] while employed by the Waco Police Department.

8. Any record of sexual misconduct, charged or uncharged, by [the named officer] while employed by the Waco Police Department and which involved [a named individual].
9. Any record of sexual misconduct, charged or uncharged, by [the named officer] while employed by the Waco Police Department and which involved any female.
10. Any audiotape recording of [the named officer] engaging in sexual misconduct, charged or uncharged, involving [a named individual].
11. Any audiotape recording of [the named officer] engaging in sexual misconduct, charged or uncharged, involving any female.
12. Any videotape recording of [the named officer] engaging in sexual misconduct, charged or uncharged, involving [a named individual].
13. Any videotape recording of [the named officer] engaging in sexual misconduct, charged or uncharged, involving any female.
14. Any photograph of [the named officer] engaging in sexual misconduct, charged or uncharged, involving [a named individual].
15. Any photograph of [the named officer] engaging in sexual misconduct, charged or uncharged, involving any female.

You state that the department is releasing some of the requested information to the requestor and claim that all or portions of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that we have previously addressed all of the information that you have submitted to us for review in Open Records Letter Nos. 2004-6523 (2004), 2004-10039 (2004), and 2004-10193 (2004). With the exception of the documents submitted as Exhibits 8 and 9, which we will discuss below, you do not inform us, nor are we aware, of any changes with regard to the law, facts, and circumstances on which Open Records Letter Nos. 2004-6523, 2004-10039, and 2004-10193 were based. Accordingly, we conclude that the department must rely on our decision in Open Records Letter Nos. 2004-6523, 2004-10039, and 2004-10193 with respect to the information submitted to us for review. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Exhibit 8 is a portion of Waco police report no. 04-032224 that was also the subject of a previous ruling issued by this office as Open Records Letter No. 2004-6523. In that ruling, this office concluded that, with the exception of basic information, section 552.108 of the Government Code authorized the department to withhold the information at issue. This office also concluded that the department must withhold some of the basic information at

issue on common law privacy grounds. However, you inform this office that the department "released the entire report (with certain redactions) instead of just releasing the basic information with certain redactions required by common-law privacy." In Open Records Letter No. 2004-10039, we ruled that the department could not continue to rely on Open Records Letter No. 2004-6523 with respect to the applicability of section 552.108 to the information in Exhibit 8. We noted, however, that section 552.101 may be applicable to some of the information in Exhibit 8 and addressed that issue, finding that portions of the information that identify the sexual assault victim must be redacted under common law privacy grounds. You further state that Exhibit 9 consists of additional information that has been added to the original police report subsequent to the date of the request that was the subject of Open Records Letter No. 2004-6523. This same information was addressed by this office in Open Records Letter No. 2004-10039. In that ruling, this office concluded that, with the exception of basic information, section 552.108 of the Government Code authorized the department to withhold the information at issue. This office also concluded that the department must withhold the basic information that identifies the sexual assault victim on common law privacy grounds.

In the instant case, the requestor is an attorney representing the alleged victim. Because the requestor has a special right of access to this information, we will address the applicability of section 552.101 and common law privacy to all of Exhibit 8 and the basic information found in Exhibit 9. Here, the requestor is an attorney who represents the alleged victim and makes this public information request on her behalf. Section 552.023 of the Government Code provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023(b). Thus, because the requestor has a special right of access to information identifying the alleged victim, you must release Exhibit 8 in its entirety and all of the basic information from Exhibit 9 pursuant to section 552.023 of the Government Code.

In summary, the department may not withhold from this requestor the information that we previously ruled was confidential under section 552.101 of the Government Code and common law privacy. The department must rely on Open Records Letter Nos. 2004-6523, 2004-10039, and 2004-10193 for the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 215562

Enc. Submitted documents

c: Ms. Aubrey R. Williams  
Montez, Williams & Baird  
3809 West Waco Drive  
Waco, Texas 76710  
(w/o enclosures)